

Kathleen Hartnett White, *Chairman*  
R. B. "Ralph" Marquez, *Commissioner*  
Larry R. Soward, *Commissioner*  
Glenn Shankle, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

March 30, 2005

Water Docket, EPA Docket Center  
Environmental Protection Agency  
Mail Code: 4101T  
1200 Pennsylvania Avenue, NW.  
Washington, D.C. 20460  
Attention: Docket ID No. OW-2004-0037

Re: Proposed Guidance on National Whole Effluent Toxicity (WET) Implementation Under the NPDES Program

Dear Sirs:

Thank you for the opportunity to comment on the proposed guidance on National Whole Effluent Toxicity (WET) Implementation under the National Pollutant Discharge Elimination System (NPDES) Program, as released for public comment in December 2004, with a comment period concluding on March 31, 2005. As the permitting authority for NPDES permits in Texas, the Texas Commission on Environmental Quality (TCEQ) offers the following comments.

We agree in principal that it is appropriate and useful for states to incorporate the framework of the national guidance in state implementation procedures. However, as stated in the draft document, federal regulations contain basic requirements but many specific procedures are more appropriately based on individual state water quality standards.

In Texas, the toxics control program to protect aquatic life and attain water quality standards is described in detail in *Procedures to Implement the Texas Surface Water Quality Standards*, January 2003 (IPs). The IPs are updated in accordance with revisions to the water quality standards and are approved by the Environmental Protection Agency (EPA). This review and approval process includes formal public comment and response to those comments. The TCEQ recognizes that the EPA regulations and policy may potentially affect the EPA's approval of the next revision of the IPs, but federal guidance documents should not be construed as "requirements" that supercede formal implementation procedures that have been publicly reviewed and approved by the EPA and the State. These implementation procedures are tailored to provide flexibility in addressing regional conditions while achieving the objectives of the regulations. The TCEQ recommends that the EPA continue to provide this flexibility and not treat the proposed guidance as a de facto rule.

The TCEQ is particularly concerned about the EPA's proposed procedures for evaluating reasonable potential and imposing WET limits. The TCEQ currently requires WET testing in permits for approximately 835 facilities, and about 65 of those permits contain WET limits. A preliminary review indicates that the EPA's proposed guidance might result in as many as 50% of the applicable permits having enforceable WET limits, a formidable number. The TCEQ recommends permittees continue to be afforded an opportunity to conduct toxicity reduction evaluations to identify sources of toxicity. Enforceable limits invoke an administrative and legal burden for permittees but do not necessarily improve the overall process of identifying and controlling effluent toxicity. In addition, the new procedures for evaluating individual permits for reasonable potential and for conducting enforcement actions for toxicity test failures would mandate a substantial increase in state resources.

If you have any questions regarding these comments, please contact Dr. Jim Davenport at 512-239-4585, email at [jdavenport@tceq.state.tx.us](mailto:jdavenport@tceq.state.tx.us) and for written correspondence please include MC 150 in the letterhead address. Thank you for the opportunity to comment on the proposed guidance.

Sincerely,



Glenn Shankle, Executive Director  
Texas Commission on Environmental Quality